

SUPREME COURT OF VERMONT

State v. Darryl M. Galloway

2020 VT 29 · No. 2019-110 · Decided March 20, 2020

SUMMARY

The Vermont Supreme Court reversed a probation-violation finding against Darryl M. Galloway. The court held that the Department of Corrections impermissibly modified the plain language of a probation condition requiring completion of a DOC-approved sex-offender treatment program by requiring completion of a specific in-prison program. The court concluded that the trial court’s reliance on that interpretation constituted plain error and reversed the revocation of probation.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Cohen, J.; Reiber, C.J.; Robinson, J.; Eaton, J.; Carroll, J.
JURISDICTION	Vermont
DECIDED	March 20, 2020
DOCKET	2019-110
DISPOSITION	reversed
PROCEDURAL POSTURE	Defendant appealed a trial court finding that he violated probation by failing to complete a sex-offender treatment program while incarcerated and the resulting revocation of probation and imposition of the underlying sentence.
STANDARD OF REVIEW	The court reviews the trial court’s factual findings for credible evidence and reviews its legal conclusion that the probationer’s conduct violated a probation condition to determine whether it is reasonably supported by the findings and does not constitute an erroneous interpretation of law. Because defendant’s modification argument was not preserved, the court reviewed that issue for plain error.
PRECEDENTIAL VALUE	Published Vermont Supreme Court opinion; precedential.
PARTIES	Darryl M. Galloway v. State of Vermont

TOPICS

probation

criminal procedure

appellate procedure

standard of review

due process

PRACTICE AREAS

criminal procedure

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constitutional law

QUESTIONS PRESENTED

1. Whether DOC impermissibly modified probation condition 31 by requiring defendant to complete the VTPSA high-intensity prison program while incarcerated.
2. Whether the trial court committed plain error by finding that defendant violated condition 31 based on DOC's interpretation of the condition.
3. Whether defendant's failure to complete the VTPSA program constituted an active refusal to comply with condition 31 despite the possibility of completing treatment later in the community.

HOLDINGS

1. DOC impermissibly modified condition 31 by interpreting the requirement of a sex-offender program approved by DOC to mandate completion of the VTPSA high-intensity prison program during defendant's incarceration.
2. The trial court committed plain error by finding that defendant violated condition 31 based on DOC's impermissible modification of that condition.
3. The court could not find that defendant actively refused to comply with condition 31 or intended not to comply because the condition permitted completion of a sex-offender treatment program of defendant's choosing in the community, and defendant had not had that opportunity.

KEY QUOTATIONS

"The power to impose probation conditions rests with the court, not employees of the DOC." (¶ 13)

"In conferring upon itself the power to direct defendant to complete the VTPSA high-intensity program during the unsuspended portion of his sentence, DOC added requirements not expressly or impliedly present in the condition and thus crossed the line between implementation and modification." (¶ 18)

"The court's conclusion that defendant violated condition 31—a conclusion based on DOC's impermissible modification of the condition—exposed defendant to ten additional years of incarceration and thus resulted in the deprivation of constitutional rights and a miscarriage of justice." (¶ 19)

FACTUAL BACKGROUND

In 2009, defendant pleaded guilty to four counts of lewd and lascivious conduct arising from incidents in which he exposed himself to clothing-store clerks. His probation included condition 31, requiring him to enroll in, participate in, and complete a DOC-approved sex-offender program. While incarcerated, DOC required him to complete the high-intensity Vermont Treatment Program for Sexual Abusers, but he withdrew from and refused to complete that program. In 2019, after serving the sentence on two counts, DOC alleged that his continued failure to complete VTPSA violated probation on the remaining two counts.

PROCEDURAL HISTORY

Defendant pleaded guilty in 2009 to four counts of lewd and lascivious conduct and received an aggregate sentence of four to twenty years, suspended except for four years to serve, subject to probation conditions including completion of a DOC-approved sex-offender program. In 2010, he admitted violating that condition after withdrawing from the Vermont Treatment Program for Sexual Abusers, and the court revoked probation on two counts while continuing probation on two others. After defendant served the resulting ten-year sentence, DOC filed a second violation complaint in 2019; the trial court found a violation, revoked probation on the remaining counts, and imposed the underlying two-to-ten-year sentence. The Vermont Supreme Court reversed.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The opinion orders reversal and states that the mandate shall issue forthwith; it does not provide additional remand instructions.

CASES CITED

- State v. Stuart, 2018 VT 81, ¶ 10, 208 Vt. 127, 196 A.3d 306
- State v. Kane, 2017 VT 36, ¶ 14, 204 Vt. 462, 169 A.3d 762
- State v. Bostwick, 2014 VT 97, ¶¶ 11-12, 14, 197 Vt. 345, 103 A.3d 476
- State v. Sanville, 2011 VT 34, ¶ 7, 189 Vt. 626, 22 A.3d 450 (mem.)
- State v. Provost, 2014 VT 86A, ¶¶ 14-16, 199 Vt. 568, 133 A.3d 826
- State v. Ayers, 148 Vt. 421, 426, 535 A.2d 330, 333 (1987)
- State v. Putnam, 2015 VT 113, ¶¶ 64, 73, 200 Vt. 257, 130 A.3d 836
- State v. Rivers, 2005 VT 65, ¶¶ 15-19, 178 Vt. 180, 878 A.2d 1070
- State v. Bryan, 2016 VT 16, ¶ 23, 201 Vt. 298, 142 A.3d 204
- State v. Galanes, 2015 VT 80, ¶¶ 13, 22, 199 Vt. 456, 124 A.3d 800
- State v. Moses, 159 Vt. 294, 300, 305, 618 A.2d 478, 482, 484 (1992)
- State v. J.S., 2018 VT 49, ¶¶ 13, 16, 18, 207 Vt. 379, 189 A.3d 552
- State v. Peck, 149 Vt. 617, 619-21, 547 A.2d 1329, 1331-32 (1988)
- State v. Austin, 165 Vt. 389, 398, 400, 685 A.2d 1076, 1082-83 (1996)
- State v. Danaher, 174 Vt. 591, 593, 819 A.2d 691, 694-95 (2002)
- State v. Masse, 164 Vt. 630, 631, 674 A.2d 1253, 1254 (1995) (mem.)
- State v. Foster, 151 Vt. 442, 443, 447, 561 A.2d 107, 109 (1989)
- State v. Cornell, 2016 VT 47, ¶ 18, 202 Vt. 19, 146 A.3d 895
- State v. Koons, 2011 VT 22, ¶ 13, 189 Vt. 285, 20 A.3d 662

